

Ragsdale



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Pickering Firm, Inc.--Reconsideration
File : B-235117.2
Date: May 11, 1989

DIGEST

The General Accounting Office will not review the protest of a subcontract awarded by a government prime architect-engineer contractor in the course of performing its contract since the selection of the subcontractor was not by or for the government.

DECISION

The Pickering Firm, Inc. requests reconsideration of our notice of April 10, 1989, dismissing its protest concerning General Services Administration (GSA) contract No. GS01P89B-WC0010, awarded to Carlson Associates, Inc., on January 11, 1989, to complete a field evaluation to remove asbestos and generally upgrade the John F. Kennedy Federal Building in Boston, Massachusetts. We affirm the dismissal.

In its original protest, Pickering asserted that it was the subcontractor designated by Carlson to be "responsible for doing all of the asbestos related work" pursuant to the GSA contract with Carlson. Pickering stated that on February 23, Carlson notified Pickering that "they were being cancelled as a subcontractor" on the John F. Kennedy Building contract and were to perform no more work on the project. We dismissed Pickering's protest pursuant to 4 C.F.R. § 21.3(m)(10) (1988), since we found the selection of Pickering as a subcontractor was not made "by or for" the government.

In its request for reconsideration, Pickering argues that since the asbestos-related work was to be performed on a federal building, and Carlson has no expertise in the asbestos removal field, its selection as the asbestos-work subcontractor was "clearly by or for the United States Government." Pickering also contends that since it was

B-235117.2

045404/138623

chosen as the subcontractor under an architect-engineering services contract, Carlson violated Federal Acquisition Regulation (FAR) §§ 36.601 (FAC 84-23) to -606(e) (FAC 84-8) by canceling Pickering as the subcontractor, since the award of the prime contract was based on Pickering being the subcontractor agreed upon during contract negotiations.^{1/} Pickering requests either that the prime contract not be awarded to Carlson for the remaining phases^{2/} of the project, or that Carlson be awarded the contract only if it utilizes Pickering as its asbestos-work subcontractor.

As we previously stated, our Office only reviews subcontract awards by the government's prime contractors where the award is "by or for the government." 4 C.F.R. § 21.3(m)(10). A subcontract is considered to be by or for the government when the prime contractor principally provides large scale management services to the government and consequently has an ongoing purchasing responsibility. In effect, the prime contractor acts as a middleman or conduit between the government and the subcontractor. American Nuclear Corp., B-228028, Nov. 23, 1987, 87-2 CPD ¶ 503. Such circumstances may exist where the prime contractor operates and manages a government facility, Westinghouse Electric Corp., B-227091, Aug. 10, 1987, 87-2 CPD ¶ 145, otherwise provides large scale management services, Union Natural Gas Co., B-224607, Jan. 9, 1987, 87-1 CPD ¶ 44, serves as an agency's construction manager, C-E Air Preheater Co., Inc., B-194119, Sept. 14, 1979, 79-2 CPD ¶ 197, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. University of Michigan, et al., 66 Comp. Gen. 538 (1987), 87-1 CPD ¶ 643. Except in these limited circumstances, a subcontract awarded by a government contractor in the course of performing a prime contract is generally not considered to be by or for the government. Techniarts Engineering, B-230263, Mar. 30, 1988, 88-1 CPD ¶ 323.

Pickering does not allege that the prime contract involved here falls within one of these limited circumstances set forth above where we will consider subcontractor protests.

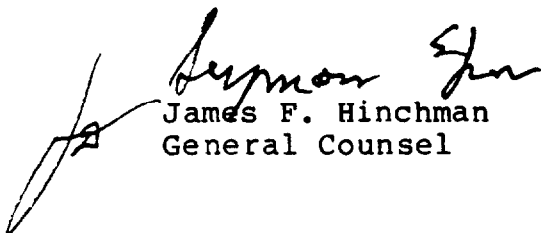
^{1/} Pickering alleged in its original protest that it was the subcontractor agreed upon during the various contract negotiations between the GSA and Carlson since the inception of the John F. Kennedy, project in 1987.

^{2/} The general upgrade of the John F. Kennedy, building is a four-phase project of which the asbestos abatement evaluation is the first phase.

Instead, Pickering argues that the jurisdictional test under 4 C.F.R. § 21.3(m)(10) is satisfied in this case because the asbestos-related work was to be performed on a federal building and the prime contractor lacked expertise in asbestos removal. However, Carlson is not providing large-scale management services as described above, nor is there any indication that it is a mere conduit to satisfy the government's requirements. To the contrary, Carlson is apparently performing a contract for architect-engineering services under which Carlson is responsible for its work. Therefore, the prime contract in the instant case does not fall within the established limited circumstances where we consider subcontract protests. See Cylink Corp., B-223681, Nov. 30, 1988, 88-2 CPD ¶ 548. Consequently, we affirm our prior dismissal.

Pickering alleges that Carlson violated FAR §§ 36.601 to -606(e) because, as prime contractor, Carlson was limited to subcontractors who have expertise, and who were specifically identified and agreed to during negotiations. However, an allegation that the awardee's performance may violate a contract provision such as the provision limiting the use of subcontractors to those agreed upon during the negotiations, is a matter of contract administration which is not for our consideration. See Dial One Interthermal, B-220382, Oct. 31, 1985, 85-2 CPD ¶ 499.

We affirm our prior dismissal.



James F. Hinchman
General Counsel